

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES L. DAVIS, aka,
MICHAEL L. HOLMES,

Plaintiff, No. CIV S-04-1390 LKK EFB P

vs.

TERESA A. SCHWARTZ, et al.,

Defendants. ORDER

Plaintiff is a prisoner, without counsel, seeking relief for alleged civil rights violations.

See 42 U.S.C. § 1983. Defendant has filed a motion to be relieved of the obligation to file a pretrial statement until after this court resolves defendant's pending motion for summary judgment. In the July 28, 2006, schedule, this court directed plaintiff to file a pretrial statement no later than March 23, 2007, and directed defendant to file a pretrial statement no later than April 6, 2007. Pretrial conference is set for April 13, 2007. Therefore, the court construes defendant's motion as one to modify the schedule.

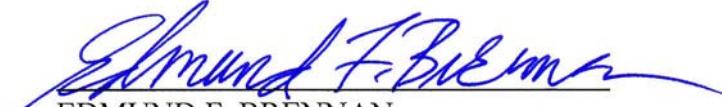
A schedule may be modified upon a showing of good cause. Fed. R. Civ. P. 16(b). Good cause exists when the moving party demonstrates he or she cannot meet the deadline despite exercising due diligence. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir.

1 1992). Defendant filed a motion for summary judgment on January 16, 2007, and plaintiff filed
2 an opposition on January 29, 2007. Thus, the matter is submitted for decision. Because the
3 resolution of that motion may eliminate some or all of the issues or otherwise alter counsel's
4 preparation of the final pretrial statement, good cause exists for granting the requested extension
5 of time.

6 Accordingly, defendant's March 22, 2007, request is granted, and the court vacates the
7 dates for defendant to file a pretrial statement and for pretrial conference. The court will set a
8 new pretrial schedule, if appropriate, after resolving defendant's motion for summary judgment.

9 So ordered.

10 Dated: March 30, 2007.


11 EDMUND F. BRENNAN
12 UNITED STATES MAGISTRATE JUDGE
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